IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

OP.No. 5903 of 1999(C)

PETITIONERS:
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1. **M.CHACKO MATHEW, S/O.M.P.MATHEW, MUTTATHOTTIL HOUSE, VIJAYAPURAM VILLAGE, KOTTAYAM.**

2. **KURIEN JACOB, S/O.K.C.KURIEN, KUNNUMPURATHU HOUSE, VIJAYAPURAM VILLAGE, KOTTAYAM DISTRICT.**

3. **GOPALAKRISHNAN, S/O.RAGHAVAN, MAMPILLIL HOUSE, VIJAYAPURAM VILLAGE, KOTTAYAM.**

4. **ZACHARIA KURIEN, S/O.K.KURIEN, ASOKA HOUSE, MUTHAMPALAM, VIJAYAPURAM VILLAGE, KOTTAYAM.**

BY ADV. SRI.THAMPAN THOMAS
SRI.JOSHY S.PUTHUSSERY

RESPONDENTS:
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1. **THE ASSISTANT EXCISE COMMISSIONER, ALAPPUZHA.**

2. **THE JOINT COMMISSIONER OF EXCISE, THIRUVANANTHAPURAM.**

3. **THE SUB INSPECTOR OF POLICE, KAYAMKULAM.**

4. **THE JUDICIAL FIRST CLASS MAGISTRATE, KAYAMKULAM.**

BY GOVERNMENT PLEADER SRI. K.V. MANOJ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.10041/1999 IN O.P.NO.5903/1999 C

DISMISSED

15/06/2007 **SD/-T.R.RAMACHANDRAN NAIR,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE FIRST INFORMATION REPORT NO.681/96 DTD. 8/11/1996, PREPARED BY THE 3RD RESPONDENT. (ENGLISH TRANSLATION OF MALAYAM F.I.R.).**

EXT.P2: **COPY OF THE COMMUNICATION SUBMITTED BY THE 1ST PETITIONER TO THE 1ST RESPONDENT ON 12/11/96.**

EXT.P3: **COPY OF THE REPRESENTATION DTD. 18/11/1996 SUBMITTED BY THE 1ST PETITIONER TO THE 2ND RESPONDENT.**

EXT.P4: **COPY OF THE NOITCE NO.A6-5177/96 DTD. 17/12/1996 ISSUED 1ST RESPONDENT.**

EXT.P5: **COPY OF THE REPLY DTD. 14/01/1997 TO THE EXHIBIT P4 NOTICE.**

EXT.P6: **COPY OF THE ORDER NO.XJ2-3167/96 DTD. 19/11/1996 2ND RESPONDENT.**

EXT.P7: **COPY OF THE INTERIM ORDER IN CRL.M.P.NO.3791/96 IN CRL.M.C.NO.2594/96 OF THE HON'BLE HIGH COURT KERALA, DTD. 2/12/1996.**

EXT.P8: **COPY OF THE INTERIM ORDER IN CRL.M.C.NO.3791/96 IN CRL.M.C. NO.2594/96 OF THE HON'BLE HIGH COURT OF KERALA, DTD. 11/04/1997.**

EXT.P9: **COPY OF THE JUDGMENT DTD. 15/01/998 IN CRL.M.C.2594/96 OF THE HON'BLE HIGH COURT OF KERALA.**

EXT.P10: **COPY OF THE PETITION FILED BY THE PETITIONERS AS C.C.236/97 UNDER SECTION 239 OF CRL.P.C. BEFORE THE JUDICIAI FIRST CLASS MAGISTRATE COURT, KAYAMKULAM.**

EXT.P11: **COPY OF THE ORDER IN C.M.P.NO.2958/98 OF THE JUDICIAL 1ST CLASS MAGISTRATE, KAYAMKULAM.**

/TRUE COPY/

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T.R. Ramachandran Nair, J.

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O.P.NO.5903 of 1999-C

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Dated this the 15th day of June, 2007

JUDGMENT

The petitioners are aggrieved by the rejection of their petition Ext.P10 to discharge them under Section 239 Cr.P.C. in a case relating to offences under the Kerala Abkari Act. Ext.P11 is the order passed by the Judicial Magistrate of First Class, Kayamkulam in C.M.P.No.2958/1998. Learned Magistrate after considering the contentions of the parties, held that as matters stand at that time, there is a prima facie case in favour of the prosecution which has got right to adduce evidence in support of its case. While dismissing the petition filed by the petitioners, it has also been made clear that they will be entitled to raise all defence open to them under law during the trial of the case. Challenging Ext.P11 order, this original petition was filed an by an interim order dated 16.4.1999 there was a stay of all further proceedings in C.C. No.236/1996 pending before the Judicial First Class Magistrate's Court, Kayamkulam. At this stage, no interference is called for in this matter, as the petitioners' remedies have been left open in Ext.P11.

2. Learned counsel for the petitioners submits that the offence is

compoundable and therefore the petitioners may be given the said benefit. The petitioners can seek the said relief before the competent officer as specified in Section 67 of the Abkari Act. Necessary applications for the same will be filed by them within one month from today. On receipt of the same, the said authority will pass orders in accordance with law, within one month of the date of receipt of the application. Depending on the outcome of the same, the learned Magistrate is directed to proceed with the case. The interim order passed by this court will continue for a period of two months.

With the above observations, this original petition is disposed of.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.5903 of 1999-C

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JUDGMENT

15th day of June, 2007